

Amendments to Senate Bill No. 49
3rd Reading Copy

Requested by Representative Dave Gallik

For the House Judiciary Committee

Prepared by David Niss
April 2, 2007 (6:10am)

1. Title, line 9.

Following: "1-1-215,"

Insert: "20-5-321,"

2. Page 1, line 12 through page 2, line 9.

Strike: page 1 line 12 through page 2, line 9

3. Page 3.

Following: line 17

Insert: "NEW SECTION. Section 1. Purpose -- legislative intent -- parental rights -- definitions. (1) The legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by the United States and Montana constitutions and that a parent's rights to that custody and control of a child are therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of control over the child, a situation that interferes in the caretaker relative's ability to perform routine functions of child rearing, including tending to the educational and educationally related medical needs of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child granted by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for a child left in the relative's care.

(2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child with little or no warning and without any other provision having been made for the child's care, such as the appointment of a guardian or the provision of a power of attorney, be granted authority to enroll the child in school, discuss with the school district the child's educational progress, and consent to an educational

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service and to medical care for the child related to an educational service without superseding any parental rights regarding the child.

(3) [Sections 2 and 3] and this section are not intended to affect the rights and responsibilities of a parent, legal guardian, or other custodian regarding the child, do not grant legal custody of the child to the caretaker relative, and do not grant authority to the caretaker relative to consent to the marriage or adoption of the child or to receive notice of a medical procedure, including abortion, not consented to by the relative, if notice is required by law, for the child except as expressly provided in this section.

(4) For the purposes of [sections 2 and 3] and this section, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Caretaker relative educational authorization affidavit" or "affidavit" means an affidavit completed in compliance with [section 3].

(c) "Health care provider" means a person who provides medical care.

(d) "Medical care" means care, by a health care provider for which parental consent is normally required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease that is needed to prevent serious bodily harm or death to the child.

(e) "Parent" means a biological or adoptive parent, or other legal guardian of the child, whose parental rights have not been terminated."

Renumber: subsequent sections

4. Page 3, line 20.

Following: "may"

Insert: ", in accordance with this section, "

5. Page 3, line 21.

Following: the first "in"

Insert: "an age-appropriate public"

Following: "school"

Insert: "in a school district where the caretaker relative resides. The child must be enrolled by the school pursuant to 20-5-321"

Strike: the second ", "

Insert: ". The caretaker relative may enroll the child"

6. Page 3, line 25.

Following: "contact"

Insert: "either of"

Strike: "parent"

Insert: "parents"

7. Page 3, line 26.

Following: "parent"

Strike: "refuses"

Insert: "or parents whom the relative is able to contact refuse"

Following: "written"

Insert: "or oral"

8. Page 3, line 29.

Strike: "2"

Insert: "3"

9. Page 4, lines 2 through 7.

Strike: ":" on line 2 through "(B)" on line 7

10. Page 4, line 7.

Strike: "IS" through "SCHOOL"

Insert: "was subject to formal disciplinary action at the child's previous school, including suspension or expulsion. If the child was subject to that discipline, the school in which the child is to be enrolled may require the child to comply with the school's disciplinary policies as a condition of enrollment"

11. Page 4, lines 10 through 20.

Strike: subsection (4) in its entirety

12. Page 5, line 21.

Strike: "6 months"

Insert: "the end of the first school year after delivery of the affidavit to a school district"

13. Page 6, line 26.

Strike: the first "parent"

Insert: "parents"

Strike: "that parent"

Insert: "the parents"

14. Page 6, line 27.

Strike: "parent refuses"

Insert: "parents refuse"

15. Page 6, line 28.

Strike: "parent"

Insert: "parents"

16. Page 7, line 12.

Strike: "parent"
Insert: "parents"

17. Page 8, line 18.

Strike: "1"

Insert: "2"

Following: the second "the"

Insert: "last-known"

18. Page 8, lines 18 and 19.

Strike: "a caretaker relative, as defined in [section 1]"

Insert: "the parent with whom the minor normally resided
immediately prior to residing with the caretaker relative"

19. Page 8, line 22.

Strike: "AND 2"

Insert: "through 3"

20. Page 8.

Following: line 24

Insert: "Section 5. Section 20-5-321, MCA, is amended to read:

"20-5-321. Attendance with mandatory approval -- tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and the resident district does not provide transportation; or

(b) (i) the child resides in a location where, because of geographic conditions between the child's home and the school that the child would attend within the district of residence, it is impractical to attend school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as

provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under 20-5-324(5)(a)(ii) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule upon a decision of the county transportation committee without an appeal being filed.

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection (1)(c) may continue to attend the elementary school after the other child has left the high school.

(d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103; or

(e) the child is required to attend school outside of the district of residence as the result of a placement in foster care or a group home licensed by the state; or

(f) the child is residing with a caretaker relative who wants to enroll the child pursuant to [section 2].

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district that the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent, a guardian, the trustees of the district of residence, or a state agency.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of attendance shall:

(a) notify the county superintendent of schools of the

county of the child's residence of the approval of the agreement within 10 days; and

(b) submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to the superintendent of public instruction for approval for payment under 20-5-324.

(4) Unless the child is a child with a disability who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, because of insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

{ Internal References to 20-5-321:

20-3-210X	20-5-314X	20-5-320*X	20-5-323X
20-5-323X	20-5-324X	20-5-324X	20-5-324X
20-6-702*X	20-7-118X	20-7-424X	20-9-141*X
20-9-311X	20-9-311X	20-10-105*X	20-10-132X
20-10-144*X	20-10-146X	20-10-146X	41-5-215X}

Renumber: subsequent sections

21. Page 8, line 30.

Strike: "2"

Insert: "3"

22. Page 9, line 2.

Strike: "2"

Insert: "3"

23. Page 9, line 4.

Strike: "2"

Insert: "3"

24. Page 9, line 8.

Strike: "2"

Insert: "3"

25. Page 9, line 12.

Strike: "2"

Insert: "3"

26. Page 11, line 5.

Strike: "2"

Insert: "3"

27. Page 12, line 1.

Strike: "AND 2"

Insert: "through 3"

28. Page 12, line 3.

Strike: "AND 2"

Insert: "through 3"

29. Page 12, line 6.

Strike: "2(4)(A)"

Insert: "3(4)(a)"

30. Page 12, line 9.

Strike: "2(4)(A)"

Insert: "3(4)(a)"

31. Page 12, line 10.

Strike: "2(9)"

Insert: "3(9)"

- END -